"In these circumstances it would be in our opinion an empty formality to allow the appellants to go out of jail on the revocation of the order (made by the Commissioner) and to serve them with the order (made by the State Government) as soon as they were out of jail."

It is obvious Tan Sri Ghazali's restriction order was actually in substitution of the previous restriction order and was made for the same reason that the previous order was made. We would therefore say that it would be an empty formality to release the appellant on the service of the cancellation order in order to serve on him Tan Sri Ghazali's restriction order.

We would therefore say this ground must also fail.

Appeal dismissed.

Solicitors: *Karpal Singh, Wong & Co.*

LIM PIT SENG & ORS. v. LAI NGION SIEW & ORS.

[F.C. (Azmi L.P., Suffian C.J. and Ong Hock Sim F.J.) February 9, 1974]

[Kuala Lumpur — Federal Court Civil Appeal No. 120 of 1973]

Tort — Negligence — Fire started on land spreading to neighbouring land — Rubber land — Dangerous operation — Person starting fire liable.

In this case the plaintiffs had brought an action against the defendants claiming that fire which damaged their rubber trees land had, owing to the negligence of the defendants, spread from fire started by them on their lands. On the facts it appeared that the fire was started by the first defendant on lands belonging to the other defendants.

Held: (1) a person who starts a fire on land belonging to another is liable in damages if through his or his servant's negligence that fire spreads to a neighbouring land and the learned judge was right in holding that the first defendant was liable;

(2) the second and third defendants were liable as the owners of the lands from which the fire had started and had spread through the negligence of the first defendant, their agent;

(3) the operation of burning off for replanting in a rubber small holding, when every tree is cut down, heaped up and left to dry before being set on fire is an operation necessarily attended with great danger, because the fire may readily spread to adjoining property and cause serious damage, and the person who executes such an operation is bound to use all reasonable precautions to prevent the fire spreading, otherwise he will be responsible for the consequences.

Cases referred to:-

(1) *Leong Bee & Co.* v. *Ling Nam Rubber Works* [1970] 2 M.L.J. 45.

(2) *Black* v. *Christchurch Finance Company* [1894] A.C. 48, 54.

FEDERAL COURT.

N. Ramachandran for the appellant.

Gurdial Bakan Singh for the respondents.

Suffian C.J.: (delivering judgment of the Court): On 27th February, 1968, Lai Piang Nam (the second plaintiff) went to his rubber smallholding Lot 1090 at Titi and found the rubber trees on it blackened and smouldering. To get there he had to pass through rubber land Lot 196 belonging to Yap Foo Kiew (the fourth plaintiff) and he noticed that the rubber trees on that lot too were blackened and smouldering. He further noticed that the rubber trees on neighbouring lots 1089 and 1091 belonging to the third and fourth plaintiffs had also been affected by fire.

In evidence the second plaintiff said that it had been dry for a few days before the fire.

The four plaintiffs sued the owner of each of four neighbouring lands, claiming that the fire which damaged their trees had, owing to the negligence of the defendants, spread from a fire started by them on their lands.

At the outset it should be observed that this is not a case where it is alleged that a fire had started accidentally on the defendants' lands as in *Leong Bees'* case,[1] but one where it had been started there deliberately.

The law applicable has been succinctly stated by the Privy Council in *Black* v. *Christchurch Finance Company*[2] at page 54 as follows:

"The lighting of a fire on open bush land, where it may readily spread to adjoining property and cause serious damage, is an operation necessarily attended with great danger, and a proprietor who executes such an operation is bound to use all reasonable precautions to prevent the fire extending to his neighbour's property . . . , and if he authorizes another to act for him, he is bound not only to stipulate that such precaution shall be taken but also to see that these are observed; otherwise he will be responsible for the consequences."

Thus the issues here are: first, did the defendants start a fire on their lands, and secondly, did that fire spread to the plaintiffs' lands owing to the defendants' negligence?

The learned trial judge found each of the four defendants liable, and they appeal to us.

In our judgment there was no evidence whatsoever that there was any fire on Lot 1294 belonging to the fourth defendant and we would therefore allow the appeal by him. There were indeed signs of a fire in the area bordering that lot and Lot 196 belonging to the fourth plaintiff, but there was no evidence whatsoever that the fire which caused that damage had in any way originated from the fourth defendant's land.

We now turn to the appeals by the other three defendants.

It was not disputed that there had been a fire on Lot 1296 belonging to the second defendant and on the adjacent Lot 1295 belonging to the third defendant. It was not disputed either that there had been a fire on each of the plaintiffs' lands.

The plaintiffs called among others their star witness Lai Tee (PW5). This witness said that he had been employed by the first defendant beginning on 2nd February, 1968, and was still working for him on 26th February, to pile up in heaps and burn off old rubber trees which had been cut down on Lot 1296 belonging to the second defendant and on Lot 1295 belonging to the third defendant. It is not disputed that these two lots were being made ready for replanting. Equally it was not disputed that the first defendant was the grandfather of the second defendant and the father of the third and fourth defendants.

Lai Tee further said that the heaped up trees were two or three feet from Lot 196, that he worked on 26th February until 2.30 p.m., that before going

home he extinguished the fires (about ten in all), that when he came to work on 27th February he found trees had been burnt on Lot 196 (the fourth plaintiff's) and that he had not seen any one working or burning on Lot 196.

The first defendant in his evidence admitted that he had employed Lai Tee and that Lai Tee had burnt off felled rubber trees on Lot 1296 belonging to his grandson (the second defendant), but insisted that Lai Tee had completed the burning off operation by 21st February, 1968.

He admitted felling rubber trees on Lot 1295 belonging to his son (the third defendant).

He must have realized that the burning off operation on the defendants' lands was dangerous because before starting it he wrote out a notice saying that he would be burning off felled trees on a certain date and posted the notice on the door of a house on Lot 196 belonging to the fourth plaintiff one week before commencing burning off.

He also said that Lai Tee would stop work at about 3 p.m. each day and before leaving the land he would ask weeders working nearby to help him put out the fire and that before Lai Tee left the lands they would go round to see if there were other fires. He said that he realized that putting out embers would prevent fire from spreading to neighbouring lands.

The first defendant called another worker, Ng Onn Chye (DW5).

The other defendants were absentee landlords and said that grandfather (in the case of the second defendant) and father (in the case of the others) managed their lands.

Thus it will be noticed that the conflicting evidence called to prove or disprove that the source of the fire was the burning off operations on lands belonging to the defendants was purely oral, and on this conflicting evidence the learned trial judge was satisfied that even after the fire the first defendant still had considerable debris to burn and, contrary to his assertion that burning was over some time before, burning was still in progress and that Lai Tee was a witness to be believed; that the manner of putting out the fire on the defendants' lands had not been such as to extinguish it completely; and that the source of the fire was the burning off operations on the property of the defendants.

Apart from what we have already said about the non-liability of the fourth defendant, we feel unable to disagree with the learned trial judge's finding as regards the second and third defendants.

We would accordingly dismiss the appeal by the second and third defendants.

As regards the appeal by the first defendant, it is to be pointed out that even Lai Tee, the plaintiffs' star witness, did not say that there were any burning off operations on the first defendant's land (Lot 1297), but on the contrary he said that on 26th February, 1968 (the day before the fire), there were rubber trees four to five years old already planted in that lot and that he did not work on it. In view of this undisputed evidence, it is clear that if the first defendant was liable it could not be because the fire had spread from a fire deliberately started on *his* land. Could he then be liable because the fire had spread from a fire deliberately started by him on his grandson's and son's lands? As already stated, he had admitted in evidence that he employed Lai Tee and others to work on Lots 1295 and 1296 belonging to his son (the third defendant) and his grandson (the second defendant) respectively.

Before the commencement of this suit on 24th October, 1968, the solicitors for the plaintiffs had written a letter on 16th August, 1968, addressed to the second, third and fourth defendants. Be it noted that that letter was not addressed to the first defendant and that in it it was alleged that the first defendant was only a servant or agent of the other defendants and that it was through the negligence of the other three defendants or the negligence of the first defendant as their servant or agent that that fire had spread to the plaintiffs's lands.

When the suit was filed, the first defendant was however made a co-defendant and in it it was alleged that he, like the other defendants, was liable for the fire damage caused — as a principal or through his servants or agents.

In our judgment, a person who starts a fire on land belonging to another is liable in damages if through his or his servants' negligence that fire spreads to a neighbouring land and in view of this we are of the opinion that the learned judge was right to hold the first defendant liable and we would accordingly dismiss the first defendant's appeal.

We have not said much about negligence because we are of the opinion that it is common knowledge in Malaysia, the world's largest producer of natural rubber, that burning off on one's rubber smallholding can be quite safe if conducted with care, but burning off for replanting, when every tree has been cut down, heaped up and left to dry before being set fire to, is, in the above-quoted words of the Privy Council, an operation necessarily attended with great danger, because the fire may readily spread to adjoining property and cause serious damage.

Before us nothing was said about damages which the learned trial judge assessed at $15,013.36 and we would therefore order this amount to be paid to the plaintiffs by the first, second and third defendants. Varying damages were suffered by each of the plaintiffs, but the court was not asked to apportion the quantum, presumably because the plaintiffs are related and can be trusted to do the apportioning fairly among themselves.

As in our opinion the damage caused to the plaintiffs' lands had spread from the second and third defendants' lands through the negligence of the first defendant their agent and the first defendant was himself negligent and as there is no evidence that the fire had spread from the fourth defendant's land, the appeals by the first three defendants are dismissed with costs and the appeal by the fourth defendant is allowed with costs.

Order accordingly.

Solicitors: *N. Ramachandran & Co.; Gurdial Bakan Singh.*